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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

COCKS, JOSIAH C

ART UNIT PAPER NUMBER

3749

DATE MAILED: 01/02/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

02014

**Office Action Summary**

Application No.

09/927,892

Applicant(s)

STEPHEN ET AL.

Examiner

Josiah C. Cocks

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment filed 12/9/03.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17, 29-36, 43-49 and 65-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 65-78 is/are allowed.
- 6) ☐ Claim(s) 1-10, 14-17, 29-36 and 43-49 is/are rejected.
- 7) ☒ Claim(s) 11-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☒ Interview Summary (PTO-413) Paper No(s). 14.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. Receipt of applicant's amendment filed 12/9/03 is acknowledged and has been entered. In the amendment applicant argues that the examiner is in error in considering that the upper portion of leg (32) of *Home* '973 would be biased into contact with the inner surface of leg (31). In support of applicant's position a declaration from Adrian A. Bruno pursuant to 37 C.F.R. §1.132 has been provided. The examiner finds the arguments persuasive that leg (32) would not be biased into contact with the inner surface of leg (31) by the leaf spring (4). However, in reconsidering applicant's claims the examiner considers that some of the claims read on the *Home* '973 reference when projection (41) is regarded as the projection of applicant's claims. Accordingly the **finality of the Office Action mailed 9/9/03 is withdrawn** and rejection of the claims based on the interpretation of projection (41) follows.

### *Claim Suggestions*

2. Claim 71, line 8, recites "...the fixed portion is affixed an inner surface..." It appears that applicant intended to recite --...the fixed portion is affixed **to** an inner surface...-- Correction is requested.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10, 14-17, 29-36, and 43-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Home* (US # 5,140,973) (cited by applicant) (hereinafter "*Home* '973") in view of *Home* (US # 5,623,866) (cited by applicant) (hereinafter "*Home* '866").

*Home* '973 discloses in Figures 1-4 a barbecue grill cart and frame assembly including a pre-formed upper assembly having upper leg portions (31) and a pre-formed lower assembly having lower leg portions (32) wherein the leg portions of the lower assembly include a projection (projection 41) having a first portion and a second portion (the two ends of projection 41) and the upper assembly includes a receiver such that the projection (41) of leg (32) is received within receiver of the upper assembly (see Fig. 3). *Home* '973 also discloses a biasing means (see spring 4) that applies a biasing force to projection (41). The examiner considers that the surface of the aperture (310) constitutes an inner surface of leg (31) and, therefore, projection (41) is biased by spring (4) into contact with the inner surface of leg (31) and provides cantilever support for the frame assembly. However, even if the surface of the aperture (310) is not properly considered an inner surface of (31) the examiner considers that when leg (32) is first inserted into leg (31) or the legs are adjusted relative to one another the projection (41) would be biased into contact directly against the inner surface of leg (31).

In regard to the limitation of the claims relating to a cooking chamber supported on the upper assembly, it would have been obvious to a person of ordinary skill in the art that the barbecue cart and frame assembly disclosed by *Home* '973 is intended to support a cooking

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chamber as a cooking chamber is necessary to the function of *Home* '973 as a barbecue grill.

*Home* '866 is cited to show that such a cooking chamber is well known in the art (see item 2 of *Home* '866) and that a person of ordinary skill in the art would consider that *Home* '973 would include the cooking chamber as shown in *Home* '866.

In regard to the limitations of the claim relating to reversing the location of the projections such that the upper assembly includes a projection and the lower assembly a receiver. Applicant discloses in the specification that locating the projection receiver in either of the upper and lower assembly are equivalent alternatives. Therefore, to simply reverse the projection and receiving portions of *Home* '973 is not regarded as patentably distinct over the prior art of record. Further, *Home* '866 shows a lower and upper assembly wherein the lower assembly forms a receiving portion for a projection from the upper assembly (see Fig. 5). It would have been obvious to a person of ordinary skill in the art at the time the invention was made that reversing the projection and receiving portions would serve as equivalent means for allowing the upper and lower assemblies to be joined to one another.

In regard to the limitations of the claims relating to the use of cast materials for portions of the frame assembly and cooking chamber, OFFICIAL NOTICE is taken as to the well known use of cast materials, such as cast metal, in forming barbecue grill assembly portions.

#### ***Allowable Subject Matter***

5. Claims 65-78 are allowed. The following is a statement of reasons for the indication of allowable subject matter:

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In regard to claim 65, the prior art does not teach or suggest the barbecue grill assembly and arrangement and operation of the projection and receiver as claimed including that a second portion of the projection is affixed to an inner surface of the lower frame member.

In regard to claim 71, the prior art does not teach or suggest the barbecue grill assembly and arrangement and operation of the projection and receiver as claimed including that the projection has a fixed portion and a free portion wherein the fixed portion is affixed to an inner surface of the lower frame member.

6. Claims 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In regard to claim 11, the prior art does not teach or suggest the barbecue grill assembly recited including the limitation that the biasing means is inserted through an aperture in the receiver to bias the first portion.

In regard to claim 12, the prior art does not teach or suggest the barbecue grill assembly recited including the limitation that is inserted through an aperture in the receiver and an aperture in the projection to bias the first portion.

In regard to claim 13, the prior art does not teach or suggest the barbecue grill assembly recited including the limitation that the biasing means is a threaded fastener.

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***Conclusion***


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Schlosser et al.* (US # 5,941,229) is included to show the state of the art concerning expanding members used to secure grill leg portions to one another (note col. 4, lines 4-10).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
December 30, 2003

  
JOSIAH COCKS  
PATENT EXAMINER  
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